

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.310 Food, Drugs, Medicines and Medical Appliances
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TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 130
RETAILERS' OCCUPATION TAX

Section 130.310 Food, Drugs, Medicines and Medical Appliances

- a) General. *With respect to food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), and prescription and non-prescription medicines, drugs, medical appliances, modifications to a motor vehicle for the purpose of rendering it usable by a disabled person, and insulin, urine testing utensils, syringes, and needles used by diabetics, for human use, the tax is imposed at the rate of 1%. (Section 2-10 of the Act)*

- b) Food
 - 1) A food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice.

 - 2) Gross receipts from sales of food for which facilities are provided so that it can be consumed on the premises where it is sold and gross receipts from sales of food that has been prepared for immediate consumption do not qualify for the reduced rate. For example:
 - A) gross receipts from sales of food and drinks by restaurants, coffee shops, cafeterias and other establishments selling food that has been prepared for immediate consumption or that provide facilities for on-premises consumption are subject to the full rate of tax.

 - B) concession stands, snack shops and other establishments that sell food items primarily (more than 50%) in individual sized servings (such as ice cream cones, bags of popcorn, and individually served sandwiches) make sales of food for immediate consumption.

 - C) sales of all hot food and hot food products are sales of food for immediate consumption.

 - 3) Delicatessens, markets, dairies and bakeries and other establishments that sell food items primarily (more than 50%) in quantities greater than individual sized servings incur the reduced rate on gross receipts from retail sales of food items. However, the full rate will apply to all sales made by such establishments that

provide facilities for the consumption of food on premises unless those facilities utilize a separate means of recording and accounting for collection of receipts from sales for consumption on the premises and are physically partitioned from areas in which food not for immediate consumption is sold. The phrase "separate means of recording and accounting for collection of receipts" includes cash registers that separately identify high rate and low rate sales, separate cash registers, and other methods by which the tax on high rate and low rate sales are recorded at the time of collection.

- 4) The reduced rate does not extend to alcoholic beverages. An alcoholic beverage is any beverage subject to the tax imposed under Article VIII of the Liquor Control Act of 1934 [235 ILCS 5/Art. VIII].
- 5) The reduced rate does not extend to soft drinks. Soft drinks will be taxed at the State sales tax rate of 6.25%. *The term "soft drinks" means any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in Section 3(a)(2) and (4) of the Grade A Pasturized Milk and Milk Products Act [410 ILCS 635], or drinks containing 50% or more natural fruit or vegetable juice.* (Section 2-10 of the Act) Frozen concentrated fruit juice, dry powdered drink mixes, and fruit juices that are reconstituted to natural strength are not soft drinks.
- 6) Food prepared for immediate consumption means food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer. Retailers who sell food they do not prepare in any way, are not selling food for immediate consumption, i.e., pre-packaged candy bars, snacks, chips, ice cream, unless that food is to be consumed on the retailer's premises. It is presumed that retailers who sell food prepared for immediate consumption in individual single-sized servings will sell all such items for consumption without substantive delay. Thus, for example, a retailer of individual sandwiches, doughnuts or cookies prepared in the morning will be subject to the high rate of tax regardless of when during a business day those items are sold and actually consumed. "Premises" are that area over which the vendor exercises control, whether by lease, contract, license or otherwise, and, in addition, the area in which facilities for eating are provided, including areas designated for, or devoted to, use in conjunction with the business engaged in by the vendor. Thus, all food sold by a restaurant for consumption on premises, whether prepared for immediate consumption or not, is subject to the high rate. Vendor premises would include eating areas provided by employers for employees, common or shared eating areas in shopping centers or public buildings if customers of food vendors adjacent to such areas are permitted to use them for consumption of food products. It will be presumed that food sold by vendors with on-premises consumption facilities will, in fact, be consumed on premises unless the vendor presents evidence to the contrary from its books and records.
- 7) For purposes of this Section, effective June 1, 1996, *food for human consumption that is to be consumed off the premises where it is sold* (Section 2-10 of the Act) includes all food sold through a vending machine, except soft

drinks and food products that are dispensed hot from a vending machine, regardless of the location of the vending machine. For example, a candy bar sold through a vending machine is subject to the low rate of tax regardless of whether on-premises facilities for consumption are provided at that location.

c) Medicines and Medical Appliances

- 1) A medicine or drug is any pill, powder, potion, salve, or other preparation for human use that purports on the label to have medicinal qualities. Medicines prescribed by veterinarians for animals are subject to the high rate of tax. A written claim on the label that a product is intended to cure or treat disease, illness, injury or pain, or to mitigate the symptoms of such disease, illness, injury or pain constitutes a medicinal claim.

A) *Examples of medicinal claims that will qualify the product for the low rate of tax include, but are not limited to:*

- i) *“medicated”;*
- ii) *“heals (a medical condition) ”;*
- iii) *“cures (a medical condition) ”;*
- iv) *“for relief (of a medical condition) ”;*
- v) *“fights infection”;*
- vi) *“stops pain”;*
- vii) *“relief from poison ivy or poison oak”;*
- viii) *“relieves itching, cracking, burning”;*
- ix) *“a soaking aid for sprains and bruises”;*
- x) *“relieves muscular aches and pains”;*
- xi) *“cures athlete’s foot”;*
- xii) *“relieves skin irritation, chafing, heat rash and diaper rash”;*

xiii) *“relief from the pain of sunburn”;*

xiv) *“soothes pain”.*

B) *The use of the terms “antiseptic,” “antibacterial” or “kills germs” may or may not constitute a medicinal claim.*

i) *The use of these terms in conjunction with a claim that the product kills germs in general does not constitute a medicinal claim.*

ii) *However, a claim that a product is for use as an antiseptic to kill germs to prevent infection in cuts, scrapes, abrasions and burns does constitute a medicinal claim.*

C) *Examples of claims that do not constitute medicinal claims include, but are not limited to:*

i) *“cools”;*

ii) *“absorbs wetness that can breed fungus”;*

iii) *“deodorant, or destroys odors”;*

iv) *“moisturizes”;*

v) *“freshens breath”;*

vi) *“anti-perspirant”;*

vii) *“sunscreen”;*

viii) *“prevents”;*

ix) *“protects”.*

D) *All lip balms qualify for the reduced rate of tax because the word “balm” is defined as a healing ointment or a preparation that relieves pain.*

- 2) A medical appliance is an item that is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. These items may be prescribed by licensed health care professionals for use by a patient, purchased by health care professionals for the use of patients, or purchased directly by individuals. Purchases of medical appliances by lessors that will be leased to others for human use also qualify for the exemption. Included in the exemption as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses qualify for exemption. Diagnostic equipment shall not be deemed to be a medical appliance, except as provided in Section 130.310(d). Other medical tools, devices and equipment such as x-ray machines, laboratory equipment, and surgical instruments that may be used in the treatment of patients but that do not directly substitute for a malfunctioning part of the human body do not qualify as exempt medical appliances. Sometimes a kit of items is sold so the purchaser can use the kit items to perform treatment upon himself or herself. The kit will contain paraphernalia and sometimes medicines. An example is a kit sold for the removal of ear wax. Because the paraphernalia hardware is for treatment, it generally does not qualify as a medical appliance. However, the Department will consider the selling price of the entire kit to be taxable at the reduced rate when the value of the medicines in the kit is more than half of the total selling price of the kit.
- 3) Supplies, such as non-sterile cotton swabs, disposable diapers, toilet paper, tissues, towelettes, and cosmetics such as lipsticks, perfume and hair tonics do not qualify for the reduced rate. Sterile dressings, bandages and gauze do qualify for the reduced rate. Diapers for incontinent adults, as well as undergarments for incontinent adults, qualify for the low rate of tax.
- d) *Insulin, urine testing materials, syringes, and needles used in treating diabetes in human beings qualify for the reduced rate of tax. (Section 2-10 of the Act)*
- e) Modifications Made to a Motor Vehicle for the Purpose of Rendering it Usable by a Disabled Person
 - 1) Effective August 17, 1995, *modifications made to a motor vehicle*, as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146], *for the purpose of rendering it usable by a disabled person*, qualify for the reduced rate of tax (Section 2-10 of the Act). The low rate applies to modifications that enable a disabled person to drive a vehicle, or that assist in the transportation of disabled persons. Examples of such modifications include, but are not limited to, special steering, braking, shifting, or acceleration equipment, or equipment that modifies the vehicle for accessibility, such as a chair lift.
 - 2) For purposes of this regulation, the term "disabled person" has the same meaning as a "person with disabilities" in Section 1-159.1 of the Illinois Vehicle Code [625 ILCS 5/1-159.1].
- f) Reporting

- 1) The retailer must keep an actual record of all sales and must report tax at the applicable rates, based on sales as reflected in the retailer's records. Books and records must be maintained in sufficient detail so that all receipts reported with respect to food, drugs, medicines and medical appliances can be supported. The determination of the percentage of sales of food items sold in individual-sized servings referred to in subsections (b)(2)(B) and (b)(3), will be made by comparing the dollar amounts of the gross receipts of the two categories of foods. The determination shall be based upon a period that will generally reflect the true character of overall sales rather than isolated or seasonal variations.
- 2) A retailer who finds it difficult to maintain detailed records of receipts from sales of food, drugs, medicines and medical appliances at the reduced rate, as well as detailed records of receipts from all other sales of tangible personal property at the full rate, may request the use of a formula. The request must be made to the Department in writing, must state the reasons that a formula method is necessary, and must outline the proposed formula in detail. Included in the request must be a description of how the method can be audited by the Department. Upon findings that the formula can be audited and will produce results that will reasonably approximate the actual taxable receipts in each category, the Department may issue its approval for use of the formula. If approval is granted, the Department reserves the right to withdraw approval or require a change in procedure at any time.

(Source: Amended at 31 Ill. Reg. 14091, effective September 21, 2007)